

REMARKS

Claims 1-7 are pending in the present application. Claims 8-20 have been cancelled by way of previous amendments.

The Examiner has rejected claims 1-7 under 35 U.S.C. § 103(a) as being obvious over US Patent Application Publication 2003/0147402 to Ould-Brahim (hereinafter "Ould-Brahim") in view of figures 1-2 and paragraphs [0036]-[0045] of the instant application (hereinafter the admitted prior art or "APA"). The Applicant respectfully disagrees.

The Office Action was issued following the United States Supreme Court's decision in the case of KSR Int'l Co. v. Teleflex Inc., No. 04-1350 (April 30, 2007). In light of the KSR decision, Applicant wishes to address various issues pertaining to a proper analysis under section 103.

The Examiner, by citing references and asserting a reason for combining elements from the references, has elected to base rejection upon a teaching, suggestion or motivation to select and combine features from the cited references. Applicant wishes to point out that the Supreme Court's KSR decision did not reject use of a "teaching, suggestion or motivation" analysis as part of an obviousness analysis, characterizing the analysis as "a helpful insight." KSR slip op. at 14-15.

When the Examiner chooses to base a rejection upon a teaching,

suggestion or motivation analysis, the Examiner must satisfy the requirements of such an analysis. In particular, the Examiner must demonstrate with evidence and reasoned argument that there was a teaching, suggestion or motivation to select and combine features from the cited references. E.g., In re Lee, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002). Moreover, the prior art must suggest the desirability of the combination, not merely the feasibility. In re Fulton, 73 USPQ2d 1141, 1145 (Fed. Cir. 2004).

In those instances in which an Examiner relies upon a single reference, there must be evidence of a teaching, suggestion or motivation to modify that reference. In re Kotzab, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000).

In the event that the cited references fail to disclose or suggest all of the elements recited in the claims, then combining elements from the references would not yield the claimed subject matter, regardless of the extent of any teaching, suggestion or motivation.

Although the Supreme Court did not reject use of a "teaching, suggestion or motivation" analysis, the Supreme Court did say that it was not the only possible analysis of an obviousness question. Because of the Examiner's chosen ground for rejection, however, the only pending ground for rejection must be a "teaching, suggestion or motivation" analysis. In the event that the Examiner chooses to consider a different avenue for rejection, this would be a new ground for rejection not due to any action by Applicant. Applicant has a right to be heard on any new ground for rejection.

Applicant further respectfully reminds the Examiner that, even after KSR, the following legal principles are still valid, having been endorsed by the Supreme Court or having been unaffected by its decision: (1) the USPTO still has the burden of proof on the issue of obviousness; (2) the USPTO must base its decision upon evidence, and it must support its decision with articulated reasoning (slip op. at 14); (3) merely demonstrating that all elements of the claimed invention exist in the prior art is not sufficient to support a determination of obviousness (slip op. at 14-15); (4) hindsight has no place in an obviousness analysis (slip op. at 17); and (5) Applicant is entitled to a careful, thorough, professional examination of the claims (slip op. at 7, 23, in which the Supreme Court remarked that a poor examination reflected poorly upon the USPTO).

Claim 1 requires a switching fabric. The Examiner identifies VPXC structure 510 in FIG. 5 of Ould-Brahim as the claimed switching fabric. Furthermore, claim 1 requires "switching and routing elements". The Examiner indicates that FIG. 5 also includes routing elements. The Examiner admits that Ould-Brahim does not expressly teach at least one of the switching elements being connected to at least one of the routing elements by the switching fabric. The Examiner then cites APA to illustrate that switching elements may be connected to routing elements without a switching fabric.

It appears as though the Examiner is suggesting that there is motivation to use the VPXC structure 510 of FIG. 5 of Ould-Brahim to connect the routers 34 (of FIG. 2 of the instant application, APA) to the switches 10 (of FIG. 2 of the instant application,

APA).

The Applicant submits that, even if the VPXC structure 510 was used to connect one of the routers 34 to one of the switches 10, the routing and switching apparatus of claim 1 would not be achieved.

In part, the combination of the VPXC structure 510 (from Ould-Brahim) and the routers 34 and switches 10 (from APA) lacks "router control providing control for said switching fabric", as required by claim 1. The Examiner appears to indicate that such control is provided in paragraph [0037] of Ould-Brahim. However, only the sentence "The connectivity may be created and/or established automatically." appears to relate to control of the VPXC structure 510 (i.e., the switching fabric, according to the Examiner). The Applicant submits that automatic connectivity teaches away from router control, as required by claim 1.

Conveniently, through use of the router control, the apparatus of claim 1 can achieve both cross-connect functionality and routing functionality.

The Examiner contends that the combination of PEs 502/504 and VPXC structure 510 in FIG. 5 of Ould-Brahim has both cross-connect functionality and routing functionality. The Applicant respectfully disagrees.

As defined in paragraph [0036] of the instant application (relied upon by the Examiner as APA), "The concept of an N x N cross-connect is understood by those skilled in the art. It is a switch fabric that can switch a signal from any N transmission

lines to another N transmission lines.” The Applicant submits that, if the combination of PEs 502/504 and VPXC structure 510 in FIG. 5 of Ould-Brahim had cross-connect functionality, then any input to PE 502 could be connected to any output of PE 504. The Applicant submits that this is simply not the case. Indeed, inputs to the PE 502 at VR-A 520 may only be switched to outputs of PE 504 at VR-A 526.

Since neither Ould-Brahim nor APA nor a combination of Ould-Brahim nor APA disclose or suggest “router control providing control for said switching fabric” as required by claim 1, the Applicant submits that claim 1 may not be rejected under 35 U.S.C. § 103(a) as being obvious over Ould-Brahim in view of APA. The Applicant respectfully requests that the Examiner remove the rejection of claim 1, and claims 2-7 dependent, either directly or indirectly, thereon, on that basis.

In view of the foregoing, the Applicant respectfully submits that claims 1-7 of the instant application are now in condition for allowance. Favorable reconsideration and allowance of claims 1-7 are respectfully requested.

Respectfully Submitted,

March 12, 2009
Date

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Docket No. 121-009
Dd: 3/17/2009